

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

NANCY JO HAZEN)	
Claimant)	
VS.)	
)	Docket No. 196,529
RIVERSIDE HOSPITAL)	
Respondent)	
AND)	
)	
PHICO INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant requested Appeals Board review of the Award entered by Administrative Law Judge Jon L. Frobish on November 22, 1996. The Appeals Board heard oral argument by telephone conference.

APPEARANCES

Claimant appeared by her attorney, Boyd A. Byers of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Jeffrey S. Austin of Overland Park, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The Appeals Board considered the record and adopted the stipulations listed in the Award of the Administrative Law Judge.

ISSUES

The Administrative Law Judge denied claimant's request for workers compensation benefits. The issues for review by the Appeals Board are as follows:

- (1) Whether an employee and employer relationship existed between the claimant and the respondent on the date of accident.
- (2) Whether claimant provided respondent with timely notice of accident as required by K.S.A. 44-520.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and hearing the arguments of the parties, the Appeals Board finds as follows:

Claimant suffered a compression fracture at the T6 vertebra during an employment physical examination conducted by respondent's employees. The Administrative Law Judge found that at the time of the accident, claimant was an employee of the respondent. However, the Administrative Law Judge denied claimant's claim, finding claimant had failed to provide notice of accident to respondent as required by K.S.A. 44-520.

Respondent contends that claimant was not an employee of the respondent at the time the employment physical examination took place. Respondent argues that claimant did not become an employee of the respondent until she successfully completed the employment physical examination and started performing her duties as a social worker for the respondent. On the other hand, claimant contends she was an employee at the time of her accident. Claimant also asserts she satisfied the notice requirement contained in K.S.A. 44-520 by telling both technicians and the physician who conducted the physical examination that she had suffered a back injury while completing the strength test portion of the physical examination.

(1) After completing the interviewing process in August of 1994, claimant was offered a job by the respondent as a part-time social worker conditioned on claimant satisfactorily completing an employment physical examination. The employment physical examination was performed on respondent's premises and conducted by two physical therapists and a physician, all employees of the respondent. Claimant testified she injured her mid upper back on September 9, 1994, while completing the strength test during the physical examination.

For a claimant to be eligible to receive benefits under the Workers Compensation Act, the claimant has to be an employee of the respondent. An employee is defined by the Workers Compensation Act as any person who has entered into the employment or works under any contract of services or apprenticeship with an employer. See K.S.A. 44-508(b).

The legislature has expressly stated in K.S.A. 44-501(g) that the Workers Compensation Act shall be liberally construed for the purpose of bringing employees and employers under the provisions of the Act. The Appeals Board finds, under the facts and

circumstances of this case, that claimant was an employee of the respondent for purposes of coverage under the Workers Compensation Act at the time she injured her back during the employment physical examination. This conclusion is supported by the fact that respondent required claimant to undergo the physical examination and to satisfactorily pass this examination as a requisite for employment. The physical examination took place on the premises of the respondent and was conducted by respondent's employees. Additionally, the employment physical examination benefited the respondent's interests by assuring that their employees were physically qualified to perform their required job duties.

(2) Claimant testified she notified both of the technicians who conducted the strength test that she injured her back while performing the second repetition of three repetitions of such test. Additionally, after claimant injured her back, Dr. Heck, a physician employed by the respondent, completed a physical examination of claimant. At that time, claimant testified she notified Dr. Heck that she had strained her back performing the strength test and would not be as flexible as usual.

Claimant successfully passed the employment physical examination and started working September 15, 1994, by attending two days of employee orientation. Claimant commenced her regular social worker job duties on September 21, 1994. Claimant notified her supervisor, Cheryl Dixon, that she injured her back during the September 9, 1994, physical examination during a performance evaluation held on October 25, 1994. Ms. Dixon then referred claimant for examination and treatment to physicians employed by respondent. On November 16, 1994, after a bone scan, claimant was diagnosed with a compression fracture of the T6 vertebra. Claimant subsequently terminated her employment with her last day worked being November 18, 1994.

The notice statute found at K.S.A. 44-520 is very restrictive and requires the employee to give the employer notice of a work-related accident within ten days thereof or establish just cause within 75 days of the accident for failure to give the ten-day notice. However, actual knowledge of the accident by the employer or employer's duly authorized agent renders the giving of notice unnecessary.

The Administrative Law Judge found the two technicians and the physician employed by the respondent to conduct the employment physical examination were not authorized agents of the respondent for the purpose of notice. The Administrative Law Judge found these individuals to be coemployees of the claimant and, therefore, not supervisors or authorized agents.

The Appeals Board finds the two technicians and the physician who conducted the employment physical examination were in this context, authorized agents for the respondent and, therefore, respondent had actual knowledge and notice of claimant's back injury. The two technicians and the physician were responsible for conducting the employment physical examination. Accordingly, they had the responsibility for reporting not only the results of the examination to the respondent but also reporting anything and

everything that occurred during such examination which would include an injury to an employee.

The Appeals Board concludes that claimant's back injury arose out of and in the course of her employment with the respondent and claimant gave timely notice of the accident to the respondent. Accordingly, the Award is reversed and remanded to the Administrative Law Judge for a decision on the remaining outstanding issues of average weekly wage, nature and extent of disability, and entitlement to temporary total disability compensation.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Jon L. Frobish dated November 22, 1996, should be, and is hereby, reversed and the case is remanded to the Administrative Law Judge for a decision on the remaining outstanding issues of average weekly wage, nature and extent of disability, and entitlement to temporary total disability compensation. The Appeals Board does not retain jurisdiction over this case.

IT IS SO ORDERED.

Dated this ____ day of February 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Boyd A. Byers, Wichita, KS
 Jeffrey S. Austin, Overland Park, KS
 Jon L. Frobish, Administrative Law Judge
 Philip S. Harness, Director